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SUBJECT: Lao Government Issues Long-Awaited Decree on Associations

REF: 08 Vientiane 456

11. (SBU) Summary. The Prime Minister's Office has officially released the text of the new decree on the formation of non-profit associations in Laos, opening the door for Lao-run civil society organizations to register legally. Issued on April 29th, the decree will permit the formation of non-profit organizations to an unprecedented degree. Although the decree does mandate a great deal of administrative control by the Public Administration and Civil Service Authority (PACSA), such regulation may in fact help strengthen the new associations by institutionalizing norms for good governance and fiscal controls from the outset. International observers are by and large very positive about the decree, while potential Lao association organizers are more cautious. WorldCONCERN and UNDP have both led programs working with PACSA to define terms, establish parameters, and recommend language to make this decree compatible with international standards for non-governmental associations. To a large extent, they have succeeded. As is often the case with Laos, however, the devil will be in the details; impressive appearing legislation is not always implemented the way the Western observers expect. End summary.

The Old World

12. As described in reftel, civil society in Laos is small and has little influence. Organizations were previously allowed to register only for limited purposes such as sustainable development or agricultural projects. Associations were allowed to form as long as they were "sponsored," in effect, by a Government of Laos (GOL) or Communist Party organization. The Lao Bar Association, for example, comes under the supervision of the Ministry of Justice. Well-connected individuals who wanted to register an organization for non-political purposes could often find a sponsor within the government, but there was no transparent mechanism for a civil society organization to form and to register.

13. The pre-requisites of civil society as the Western community understands them, namely guaranteed freedom of association, expression, and media, are not present. Groups that have registered appear to have little interest in political advocacy or attempting to change the status quo in any significant way; the primary goal of most organizations seems to be disseminating information to a wider audience. Almost inevitably, the information is drafted and disseminated in tandem with GOL goals.

The New World

14. Under the new decree, applicants must overcome a set of administrative hurdles in order to receive formal registration from the GOL. Under this process - assuming all deadlines are met but no

one works faster than they must - registration will take approximately 7-8 months. For Laos, the steps are set to occur relatively rapidly. (NOTE: It is not uncommon for international NGOs to spend one or two years securing a Memorandum of Understanding that permits them to work in Laos.)

15. According to the decree, non-profit associations (NPAs) may be formed as long as they are consistent with the constitution, local and ethnic traditions, and do not threaten national stability or the social order. Founders must be Lao citizens over age 18. The association must have a charter, office, a yet-to-be-defined level of assets, and a set number of members depending on whether the association is national, provincial, or at the village level. Associations may be economic; professional, technical and creative; social welfare; and "other."

16. To incorporate legally, the association founder must have a "mobilization committee" that drafts the required documents and submits them to PACSA, or to local authorities if not a national association. Documents must include the association's proposed charter; personal history, certificate of residence, police record and diplomas of the mobilization committee members; list of association members; and certification of the office. (Note: Article 15 of the decree also lists what must be in the charter.)

17. Within 30 days, PACSA or the local authorities must issue a temporary license or reject the application. Once the temporary license is received, the mobilization committee is dissolved and the association's general assembly (of all members) must elect executive and control boards, approve the charter, and draft a work plan within 90 days. After the general assembly has met, the association's new executive board has 30 days to send the report on

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the assembly's outcome, revised charter, minutes of the assembly, work plan and any other resolutions to PACSA or the relevant local authority. Within 60 days of receiving the general assembly reports, the relevant authority must approve or disapprove of the charter. If the charter is not approved, the authority must provide "clear and complete explanations in writing" to the association.

18. The decree also describes the duties of each of the association's boards and officers, the types of members, required meetings, how to dissolve a registered association, and asset and financial management (including a provision that limits gross overhead costs to no more than 25% of the association's planned expenditures). Associations are also required to submit annual reports on both activities and finances.

19. The decree will go into effect 180 days after signing, which will be October 29, 2009. Associations incorporated and operating prior to this decree's date will have 90 days after October 29 to apply for re-incorporation under the terms of this decree.

There Be Dragons - Lost Continents

10. International observers and consultants have been working closely with PACSA to draft the decree, and will now be working to ensure that the guidelines for implementation are not so burdensome that they make practical application of the decree impossible. CONCERN's staff members continue to be optimistic about the guidelines, but admit there are some serious holes in the decree that will have to be cleared up during the course of drafting the application forms and specific rules for implementation. PACSA - which knows it must be ready to accept applications on October 29 - is already working on those rules.

11. For example, the decree states that the association must have permission from the "relevant sectors," but does not set out exactly how that permission should be obtained. PACSA apparently intends to be the one-stop shop for NPA registration, allowing applicants to deliver all the forms to the PACSA office for distribution to the "relevant sectors" as defined by PACSA's interpretation of the applicant's area of work. However, line ministries and other

organizations may insist on having applications submitted directly to them, which creates another level of bureaucracy and the potential for additional political influence and delays to an already burdensome process.

¶12. In fact, the approval process from start to finish is as yet unclear. CONCERN hopes that PACSA will be allowed to assume a positive response if the deadlines with other offices and agencies expire and no objection is formally registered, but that has not yet been finalized. (Note: It would also not be consistent with general GOL practice. End note.) The GOL also must approve changes to association staffing, funding, and other administrative details, but it is not clear that an NPA would have to formally submit a request for every staff change prior to making a personnel shift, or would be able to document all such changes in an annual report. The contents of the annual report and the reporting requirements for registered NPAs are also still unclear.

¶13. Finally, there is still no answer on how funding will be approved, especially if the donors are not Lao. Currently, the Ministry of Foreign Affairs says it must approve all foreign donations to Lao NPAs and objects to allowing PACSA to approve such financing. CONCERN staff hope the Prime Minister's office can overcome the MFA's resistance in order to streamline the process, ensure greater transparency, and keep all NPA-related administration within PACSA.

¶14. The decree also assumes that associations will be staffed by full-time workers with some kind of "membership" at large; have an office; have specific projects to run; and be funded. Associations such as alumni groups or professional associations are unlikely to wish to register under this decree, because usually such organizations are little more than ad-hoc groups of like-minded individuals together for irregular contact and perhaps the occasional conference. The PAO's enthusiasm for establishing a real Lao Fulbright Alumni Association, for instance, was quashed as soon as she read the terms of the decree.

Will the Emperor Have New Clothes?

¶15. CONCERN staff estimate that as many as 60-70 groups will wish to register shortly after the decree goes into effect on October 29,

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2009, split more or less evenly between "new" associations and those that were previously legally established through other mechanisms, such as the LUSEA decree (see reftel). In theory, they will apparently be required to re-register within 90 days or risk losing their formal recognized status. "New" associations will include groups formed and active but not previously registered; and small organizations currently operating as parts of legally-registered international NGOs, but that have in effect become independent units operating under the NGO's umbrella MOU. The Gender Development Group operating under CONCERN's wing is one such organization. Their future founder is already working to establish the required boards and membership so that the group is prepared to submit paperwork as soon as the doors are open.

¶16. More established Lao nonprofits are less anxious to change their status, and far more sanguine about the threat of losing their current sponsors or permissions. The Participatory Development Training Center (PADETC), established 10 years ago under the auspices of the Ministry of Education, has no intention of filing paperwork to register under this new decree, according to their deputy director. "The current system works well for us," he said carefully, "and we expect the new system to remain somewhat flexible." He also noted, however, that PADETC is fully prepared to encourage new Lao NGOs to register, and will share its experience with boards and accounting and governance procedures.

¶17. PADETC - well-connected and well run - may well be correct; it is unlikely that PACSA will succeed in breaking more established rice bowls when the decree goes into effect. Organizations with established reputations and a good linkage to their current

supervisory organization may see no need to mess with their governance and perhaps unduly burden themselves with new administrative constraints unless they are forced to do so by their legal hosts. Post expects that would be unlikely in the case of organizations like PADETC, which bring in money and consultants and support to the Ministry of Education; and perhaps for the Lao Bar Association, where the Ministry of Justice may see a good reason to continue to oversee, however lightly, the activities of the 100 lawyers in the country who do not work directly for the GOL.

Explorers Needed

¶18. International NGO advisor and consultant Julia Demichelis, in Vientiane on a previously-arranged Strategic Speaker Initiative program on civil society for the Public Diplomacy Section, told a group of Lao NGO workers that while the new decree may look burdensome, it was in fact well in line with international best practices. She noted that civil society has just as much temptation for corruption and poor management as other sectors, and good governance from the beginning will help strengthen the associations who can comply with these rules. She encouraged the groups, who represented associations large and small, Lao and international, to share best practices and consult with one another on issues as they came up. Two participants began a conversation during the break on sharing accounting databases and donor requirements, wondering whether their current systems will be sufficient for the new rules. Implementing the decree, they agreed, will be a new experience for all sides, but "great"...if it works.

¶19. Comment: This decree on Lao non-profit associations is clearly a step in the right direction for a government that has resisted the idea of ceding influence to other organizations, especially Lao organizations, whose leaders cannot be summarily deported. Post expects that there will be a rush of new, smaller, focused organizations that hurry to register, often with significant support and backing from an interested foreigner or three.

¶20. Comment continued: It also appears - at least at present - that the GOL will encourage the formation of such associations to take on some of the work it is increasingly expected to support by the growing and increasingly educated and urbanized population, but does not have the resources to undertake. An article in the Vientiane Times on June 8 says the GOL intends to "hand over more development projects to non-government organizations," according to an interview with State Administration and Development Department Deputy Director General Ampha Simmasone. The idea, according to him, is to "reduce the burden on state agencies by delegating work to social organizations." He said that the government intends to allow those organizations to accept international funding, and will provide "some tax relief" as an incentive. If true, and the GOL does indeed manage to establish a clear, transparent, system with institutionalized governance norms, it may well open the doors to a much larger, livelier and more effective civil society. International donors, Post hears, are waiting in the wings with open

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wallets. New organizations may find themselves with more attention, funding, and offers of assistance than they can initially support.

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